IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

APPEAL FROM ORDER NO.565 OF 2006.
WITH
CIVIL APPLICATION NO. 731 OF 2006.

Shri Prakash P.Porwal ... Appellant.
V/s.
Kanthan A. Andrews ... Respondent.

Shri Rajesh Datar for the appellant.

Shri Ravindra G. Bhat for the respondent.

CORAM : A.M. KHANWILKAR, J.

DATED : 8.8.2006.

P.C. :

. Heard Counsel for the parties.

2. I see no reason to interfere with the impugned order. Even if THE view taken by the trial Court on certain assumptions was to be ignored, it is seen that the suit is instituted by the appellant for recovery of Rs. 10,000/- from the respondent-defendant. In the said suit, the question of entertaining request of the plaintiff to grant order of injunction in respect of the immovable property, which is not the subject matter of the suit, cannot be considered.

3. Counsel for the appellant however, contends that by virtue of clause (b) of Rule 1 of Order 39 of the Civil Procedure Code, it was open to the appellant to take recourse to the such remedy. It

is not possible to accept this submission. The expression "property" appearing in clause (b) of R.1 of O.39 will have to be understood and ascribable to the property which is the subject matter of the suit and not someother property which is not the subject matter of the sui. For that provision is invoked on the apprehension that the defendant is likely to dispose of the suit property thereby rendering the suit for recovery of certain amount as redundant. In the case such as present one, the plaintiff at bes can take recourse to remedy under Order 38 for attachment before judgment. Scope of this proceeding will be different than the one under Order 39. Hence appeal is dismissed. Civil Application is also disposed of.

4. At this stage,learned Counsel for the appellant prays that the appellant be granted some time to enable him to take recourse to other remedy available in law. Respondent has no serious objection if such limited relief is granted. Accordingly, order of status-quo with respect to immovable property referred to in application under O.39, passed by the lower Court to continue for a period of two weeks from today.

(A.M. KHANWILKAR,J.)